

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BRENDA K. HURSTON : CASE NO. C-1-01 313
Plaintiff : (Judge Weber)
-vs- :
BUTLER COUNTY DEPT. OF :
JOB AND FAMILY SERVICES, : MEMORANDUM OF DEFENDANT IN
et al : OPPOSITION TO PLAINTIFF'S
 : MOTION TO AMEND WITNESS LIST
Defendants :

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Now comes defendant Butler County Department of Job and Family Services and opposes plaintiff's Motion for Leave to Amend Witness List. This is supported by the attached memorandum.

McGOWAN & JACOBS, LLC

s/Jack C. McGowan
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MEMORANDUM

The plaintiff Brenda Hurston has now filed a Motion for Leave to Amend Witness List to add eleven new witnesses. This motion is untimely and comes after the discovery deadline has long since passed.

Plaintiff filed her first witness list on or about September 12, 2002 (Doc. 37) and amended it twice (Doc. 39 and 41) before the end of that year. It is now one and a half years later, and the

plaintiff, without explanation as to why she could not have identified these witnesses earlier, seeks to add witnesses, several of whom are experts.

Plaintiff has not suggested what testimony she expects to elicit from proposed witnesses twelve through seventeen who are simply listed as hostile witnesses. However, it seems fairly clear that the testimony she expects to elicit from witness number two Katherine Rump Butler which goes back to a meeting in 1990 is of questionable relevance to the claims of this case. Plaintiff did not avail herself of any federal or state administrative remedies with regard to any events which occurred in 1990, and the Complaint which she filed in January, 2001 was not timely regarding events which had occurred in 1990. Accordingly, it seems clear that even under the most liberal of standards, plaintiff should not be permitted to add Katherine Rump Butler to her witness list.

In addition, plaintiff seeks to add Gary Wolf (proposed witness number six) and Terry Marischen (proposed witness number seven) who allegedly had some contact with her during the course of her employment. How these witnesses would give testimony that is relevant to the case is not made apparent and for this reason alone, plaintiff should not be allowed to amend the witness list to include them. Moreover, defendant has not had the opportunity to discover what they will say, nor was counsel for defendant even aware of their existence at the time he took the deposition of the plaintiff so that he could explore in more detail what these witnesses could contribute, if anything, to the plaintiff's case.

Plaintiff also seeks to add a nurse and two doctors to the witness list. Again, the disclosure of these individuals as actual trial witnesses comes well after the disclosure deadline and the granting of plaintiff's motion would prejudice defendant who is seeking to file a motion for summary judgment to at least narrow the issues while plaintiff is trying to expand her claims with new witnesses.

Accordingly, defendant Butler County Department of Job and Family Services hereby respectfully requests the Court deny the plaintiff's motion as being untimely and without sufficient justification for the omission of these witnesses from prior disclosures by the plaintiff.

McGOWAN & JACOBS, LLC

s/Jack C. McGowan

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Jack C. McGowan, 246 High Street, Hamilton, OH 45011, and I hereby certify that I have mailed the document by U.S. Postal Service via certified mail to the following non CM/ECF participant: Brenda K. Hurston, 1812 Grand Avenue, Middletown, Ohio 45044.

s/Jack C. McGowan

Jack C. McGowan